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Special meeting on international cooperation in tax matters

Summary record of the 26th meeting
Held at Headquarters, New York, on Friday, 18 May 2018, at 10 a.m.

President: Mr. Mahmadaminov (Vice-President) ..... (Tajikistan)

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In the absence of Ms. Chatardova (Czechia), Mr. Mahmadaminov (Tajikistan), Vice-President, took the Chair.

The meeting was called to order at 10.05 a.m.

Agenda item 18: Economic and environmental questions (*continued*)

(h) International cooperation in tax matters (*continued*) (E/2018/45-E/C.18/2018/1, E/C.18/2018/2)

Opening of the special meeting

1. **The President** said that implementation of the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda) continued to pose crucial challenges, including in the area of domestic resource mobilization. Strengthening domestic resource mobilization, especially through taxation, would be critical to ensuring that countries had the financial means to achieve sustainable development. The special meeting on international cooperation in tax matters would provide an opportunity to discuss a range of key issues related to international cooperation in tax matters, and should be viewed as a key component of a broader discussion on international tax cooperation taking place in the Economic and Social Council.

2. At its sixteenth session, the Committee of Experts on International Cooperation in Tax Matters had focused on taxation of projects funded by official development assistance (ODA), and taxation and the digitalization of the economy. In that connection, an interactive dialogue on taxation and the digitalized economy had been held in April between United Nations ambassadors and the executive directors of the Bretton Woods institutions at the 2018 forum on financing for development follow-up. Participants had highlighted the need to ensure developing countries' involvement in decision-making and had called for increased capacity-building to enable countries to adequately address the emerging challenges related to taxation in the digitalized economy.

3. The taxation of ODA-funded projects would be the focus of the special meeting that afternoon. In addition to a panel discussion, participants would be briefed on the outcome of the first global conference of the Platform for Collaboration on Tax, which had taken place in February 2018, and on the ongoing work of the Platform to strengthen tax capacity in developing countries.

4. The importance of taxation as an enabler of the mobilization of domestic resources to facilitate sustainable development could not be overemphasized. The current special meeting should be seen as part of ongoing efforts by the Council and the Committee of Experts on International Cooperation in Tax Matters to strengthen international cooperation in tax matters, and should result in concrete recommendations and outcomes that would contribute to the achievement of shared goals.

5. **Mr. Harris** (Assistant Secretary-General for Economic Development and Chief Economist, Department of Economic and Social Affairs) said that taxation provided Governments with critical funds to deliver public services in such areas as health, education and infrastructure that were vital for sustainable development. Physical presence in a country had historically been a requirement for making foreign companies subject to corporate income tax and obliging them to collect value added tax. Large companies were currently offering products and services in countries where they had no physical presence and were thus not subject to such requirements. International cooperation was needed to ensure that countries could collect their appropriate share of taxes, while minimizing negative impacts on other economies.

6. Although the need to adapt national and international tax rules to the new business models made possible by digital technology had been recognized for some time, progress had only been incremental. Noteworthy advances included the requirement that the European Union had introduced in 2003 for non-European Union suppliers that sold digital products and services in the European Union to collect value added tax, and the 2015 joint Group of 20 (G-20)-Organization for Economic Cooperation and Development (OECD) project on Base Erosion and Profit Shifting resulting in an internationally endorsed recommendation that foreign suppliers of digital products and services should collect value added tax and remit it to the relevant countries. However, many developing countries had not yet changed their laws and administrative practices to benefit from those advances; in that regard, he encouraged them to note the positive experience of South Africa.

7. Unfortunately, progress on corporate taxation had been even slower. Internationally agreed rules still required some form of physical presence in a country before it could levy income tax. Some countries had taken unilateral actions to address the problem; however, such actions could create additional challenges. A month earlier, OECD had released its report entitled "Tax Challenges Arising from

Digitalisation — Interim Report 2018", which called for the adoption of an internationally agreed long-term solution by 2020. It was encouraging that the Committee of Experts on International Cooperation in Tax Matters had put taxation and the digital economy on its agenda, as it could exert significant influence on the international community towards finding a universal solution.

8. As concerned the taxation of ODA-funded projects, some donors continued to request wide-ranging exemptions, including from customs duties on imported goods, value added tax on imported or locally provided goods and services, and income taxes for personnel and enterprises. Those exemptions could represent as much as 3 per cent of certain countries' gross domestic product (GDP), a substantial proportion given that, in many developing countries, the tax-to-GDP ratio was well below the level needed for the provision of essential public services.

9. Requests for exemptions created various problems in addition to foregone tax revenue, including increased transaction costs for international assistance, extra work for already overburdened tax administrations, legal uncertainty and potential for abuse when exemptions were poorly designed, and the likelihood that other taxpayers would demand similar treatment. In 2007, a set of draft guidelines had been presented to the Committee of Experts with a view to ensuring a greater consensus between donors and partner countries' tax administrations. The Committee of Experts could consider updating and strengthening the guidelines at the technical level to reflect relevant developments of the past decade, which would support revitalized efforts to achieve greater consensus on the underlying principles.

10. The Department of Economic and Social Affairs would continue to work with its partners — the International Monetary Fund (IMF), OECD and the World Bank — in the inter-agency Platform for Collaboration on Tax. The Department of Economic and Social Affairs remained firmly committed to advancing the discussion on international tax cooperation through its support to the Economic and Social Council, the Committee of Experts, and the Platform for Collaboration on Tax, in order to harness the full potential of taxation for sustainable development in every country.

Keynote address

11. **Mr. Fowler** (Executive Chairman of Federal Inland Revenue Services, Nigeria), delivering the keynote address and accompanying his statement with a digital slide presentation, said that Africa had 30 per cent of the world's natural resources, yet remained the poorest continent. It was clear that effective taxation across Africa was the key to sustainable economic, social and environmental development.

12. In the 1970s, Nigeria had found itself in a similar position to many other African nations: it had discovered natural resources in commercial quantities, and began to sell them. In Nigeria, the revenue generated from oil at that time had been more than sufficient to fund government activities. Meanwhile, developed countries were reforming their tax systems. African countries soon discovered that they did not control the prices of the natural resources they were exporting, always in a crude form. The return on raw materials was minimal; they accounted for only a small percentage of the price of the final products. Moreover, most developing countries were primarily consumers rather than producers of products, with 90 per cent of manufactured items sold to developing economies.

13. Certain countries had developed their own strategies to ensure that they received some tax revenue from the digital economy. India applied a 6 per cent equalization levy for specified services provided by non-residents, and Argentina required foreign suppliers to register for value added tax. However, when it came to demanding taxes from offshore companies, developing countries had less leverage than developed countries. As such, it was encouraging that the United Nations not only had the interest of developing economies at heart, but also sought to create a fair playing field with regard to tax revenue.

14. The main aims of the Addis Ababa Action Agenda included supporting the mobilization of additional domestic public finance and its more transparent and effective spending, encouraging a shift in the financial sector towards long-term investment horizons and sustainability, and facilitating development cooperation, particularly by plugging funding gaps.

15. Although Nigeria produced 2 million barrels of oil per day, the income that generated was not significant in view of its population of 170 million. An estimated $50 billion in tax revenue was lost annually from the African continent. While perhaps not a very significant sum for developed countries, for developing countries with scant resources, it was a vast amount.

16. Despite the prevailing perception in many developing countries, it was possible for them to improve their situation. Making use of technology, Nigeria had been able to increase its tax base by more than 800,000 new corporate accounts over the past 12 months. Corresponding tax revenue from non-oil

sources had increased: it had accounted for an average of 64.3 per cent of total tax revenue in the period 2015–2017, as opposed to an average of only 42.8 per cent in the period 2012-2014. Nigeria had thus managed to shift from a heavy dependence on oil to a more diversified tax base. His Government was also using innovative technology to increase its collection of value added tax; between 2015 and 2017, it had increased the amount of value added tax it collected by approximately 25 per cent.

17. Nigeria had been able to make such progress as a result of political will, international cooperation, and cooperation with the judicial system, which had recently judged in its favour in a case against Vodacom concerning the value added tax liability of a non-resident company. Nigeria was a signatory to several tax treaties, including the OECD Convention on Mutual Administrative Assistance in Tax Matters, and it would continue to seek the assistance of its treaty partners to collect the appropriate taxes from their residents and remit them to Nigeria.

18. Numerous developed countries were interested in signing tax treaties with developing countries, but were reluctant to issue visitors' visas to nationals of those same countries. The two should be linked; if developing countries were important enough to become partners in matters of trade or tax, their citizens who wanted to visit developed countries for work or leisure should not be hindered.

19. Collecting tax was difficult for developing countries as a result of various problems, including large informal sectors and — because they had relied for so long on selling natural resources, rather than focusing on establishing solid tax systems — poor tax cultures, as well as a dearth of skilled tax administration staff and poor legislation. While the United Nations and OECD could help, developing countries themselves must take the lead in strengthening their own tax systems.

20. Illicit financial flows also posed a significant challenge for African countries. Contrary to popular perception, however, base erosion and profit shifting by multinational enterprises was to blame for approximately 70 per cent of illicit flows, whereas corruption was at the root of only some 30 per cent. Multinational enterprises accounted for over 50 per cent of the tax revenue of most African countries; if those companies were involved in base erosion and profit shifting, it would be very difficult for countries to make any progress. Companies were increasingly providing services remotely; for instance, the use of driverless trucks in the extractive industries meant that mining companies did not need to maintain any human presence. It was vital for African countries to find a way to tax such services.

21. With regard to the taxation of ODA-funded projects, developing countries accepted and appreciated aid, but it was more important to them that donors paid the correct amount of tax. In fact, it was often more beneficial in the long term for developing countries to take charge of projects themselves, in order to ensure follow-through, and because expatriate staff tended to be costly. The United Nations should convey to political leaders of developing countries that the only route to future economic and social development was through taxation. Donor aid would not be there forever; ultimately, their futures were in their hands. Nigeria was on the right path; if Nigeria could revamp its taxation system, other developing countries could do the same.

Update on the work of the Committee of Experts on International Cooperation in Tax Matters

22. **Mr. Mensah** (Co-Chairperson of the Committee of Experts on International Cooperation in Tax Matters; and Assistant Commissioner, Revenue Authority, Ghana) said that the current membership of the Committee had been appointed in July 2017, and had a four-year mandate. The Committee was composed of six members from Africa, four from Asia, three from South America, two from North America and the Caribbean and ten from Europe. Its members were appointed by the Secretary-General and served in their personal capacity as experts. At its fifteenth session, held in Geneva in October 2017 — the first meeting of its new membership — the Committee had, for the first time, appointed two members as co-chairs: Ms. Peters of New Zealand and himself. It had also set up eight subcommittees, through which it would conduct its work. The sixteenth session of the Committee had just taken place in New York, from 14–17 May. The Committee reported to the Council twice a year, after each of its meetings; its main meeting was normally held immediately before the special meeting of the Council on international cooperation in tax matters.

23. **Ms. Peters** (Co-Chairperson of the Committee of Experts on International Cooperation in Tax Matters; and Policy Manager, Inland Revenue, New Zealand) said that much of the work of the Committee was carried out throughout the year by its subcommittees, which were established at the first meeting of each new four-year cycle, when its membership changed. Each subcommittee was organized by a coordinator. Committee members themselves decided which subcommittees they could add the most value to, and typically they joined three or four subcommittees.

Subcommittees could also include country observers, academics and business stakeholders.

24. **Mr. Mensah** (Co-Chairperson of the Committee of Experts on International Cooperation in Tax Matters; and Assistant Commissioner, Revenue Authority, Ghana) said that the Subcommittee on Extractive Industries Taxation Issues had been set up in 2013 by the previous membership of the Committee to provide guidance for developing countries on taxation of the extractive industry, and the exploitation of their natural resources. The Subcommittee had developed a handbook for developing countries, the *United Nations Handbook on Extractive Industries Taxation*, which had been launched the previous day at the sixteenth session of the Committee and was available on the United Nations website. The Committee hoped to launch the print version in October.

25. The Subcommittee on Dispute Avoidance and Resolution focused on developing the capacity of developing countries to settle disputes relating to tax matters. Most importantly, it focused on the Mutual Agreement Procedure mechanism, and was tasked with developing a guide for developing countries to facilitate their use of the mechanism in tax-related disputes.

26. The Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing developed the capacity of transfer pricing specialists in developing countries through its *United Nations Practical Manual on Transfer Pricing for Developing Countries*, the second edition of which had been launched in October 2017. The Subcommittee was also mandated to provide further guidance and share examples of countries' successful transfer pricing practices.

27. The Subcommittee on Environmental Taxation Issues had been set up in October 2017. Its mandate was to provide guidance on the establishment of a carbon tax and other environmental taxes that would help developing countries to ameliorate environmental degradation and thereby support their achievement of the Sustainable Development Goals.

28. The Committee as a whole, having determined that developing countries lacked capacity in tax treaty negotiation, had established the Subcommittee on Tax Treaty Negotiation to prepare and produce a manual for developing countries' tax practitioners on how to negotiate treaties. The Subcommittee was tasked with updating the *United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*, which had been launched in 2017.

29. **Ms. Peters** (Co-Chairperson of the Committee of Experts on International Cooperation in Tax Matters; and Policy Manager, Inland Revenue, New Zealand) said that, the previous day, in addition to the *United Nations Handbook on Extractive Industries Taxation*, the Committee had launched an update to the United Nations Model Double Taxation Convention between Developed and Developing Countries. The United Nations Model Convention was one of two important model tax treaties used to negotiate bilateral tax treaties, the other being the OECD Model Tax Convention on Income and on Capital. The 2017 update addressed base erosion and profit shifting with new anti-abuse rules designed to prevent firms from taking advantage of treaty benefits in ways that were not intended, expanded circumstances in which foreign investors were treated as taxable in the countries where they carried out their business operations, and introduced the possibility of a tax on technical services provided outside of a country by foreign companies.

30. At its first meeting, the new membership of the Committee had realized that, while the aforementioned changes to the United Nations Model Convention were highly beneficial, they did not address the problem of the digitalized economy. Therefore, it had set up the Subcommittee on Tax Issues related to the Digitalization of the Economy.

31. On the assumption that the world would change in relation to international taxation over the next four years, a subcommittee had been established to draft the next update to the United Nations Model Convention. The Subcommittee on the Update of the United Nations Model Tax Convention would incorporate tax policy developments that the Committee recommended over the course of its term.

32. Lastly, the Committee had established the Subcommittee on United Nations Tax Committee Practices and Procedures. Since the Committee met only twice a year, it was essential to maximize its productivity and efficiency in those meetings. The Subcommittee was thus tasked with creating clearer rules and guidance for the conduct of its business.

33. **Mr. Mensah** (Co-Chairperson of the Committee of Experts on International Cooperation in Tax Matters; and Assistant Commissioner, Revenue Authority, Ghana) expressed his thanks to the Economic and Social Council for agreeing to increase the number of Committee meetings from only one five-day meeting per year to two four-day meetings, to be held in Geneva in October and in New York in May. The Council's facilitation of developing countries' participation in

meetings of the subcommittees had helped the Committee to meet its mandate.

Interactive dialogue: "Taxation and the Digitalization of the Economy"

34. **Ms. Anyangwe** (*The Guardian*), moderator, opening the dialogue, said that the panellists represented diverse countries and bodies, and as such would be able to share a range of experiences, perspectives, challenges and opportunities related to emerging tax policy and administrative issues in the context of the digitalization of the economy. The Sustainable Development Goals were ambitious and required huge amounts of financing; the panellists would take stock and propose ways forward with regard to taxation in the age of the digitalized economy, and even muse on broader questions such as the purpose of tax, which might support the achievement of consensus on how it should be applied.

35. **Mr. Roelofsen** (Co-Coordinator, Subcommittee on Tax Issues related to the Digitalization of the Economy, Committee of Experts on International Cooperation in Tax Matters; and Deputy Head, International Tax Unit, Ministry of Finance, Netherlands), panellist, accompanying his statement with a digital slide presentation, said that the great interest among Committee members, Member States and others in joining the Subcommittee on Tax Issues related to the Digitalization of the Economy, which had been formed in October 2017, testified to the pressing nature of the topic. However, despite the importance of the subject, the Subcommittee had yet to start its substantive work. That was partly because of a debate over whether its mandate should include issues of tax administration related to the digitalization of the economy; the Subcommittee had finally decided to refrain from specifically addressing those matters over the next four years. It was also waiting to see the results of numerous recent developments around the world relating to taxation in the digital economy, including the publication of the OECD report entitled "Tax Challenges Arising from Digitalisation — Interim Report 2018", recent European legislation and the introduction of relevant policies by a number of countries, before taking any action. However, he expected that the Subcommittee would report to the Council on its progress in May 2019.

36. He then turned to European developments on the taxation of the digitalized economy. To provide context, he said that the European Commission was an executive body, responsible for making proposals but not actually making laws, while the Ministerial Council decided which rules to introduce. The European Parliament was increasingly insisting on measures against tax avoidance, and would probably play an even greater role in the future.

37. While indirect taxes fell within the competence of the Commission, direct taxes had always been the responsibility of member States. However, the Commission could issue rules to guarantee that the European Union market remained a single market, and it was using its mandate on market integration to influence direct taxes. Thus, the issues of tax avoidance by companies and tax competition among States had become entwined. By forcing countries to adopt rules to maintain market integration, the European Union was also imposing rules that would counter tax avoidance. The Directors-General of the Taxation and Customs Union and the Competition department were working to integrate their actions, resulting in directives proposed by the Commission and adopted by the Council, including on parent companies and subsidiaries, taxation of cross-border interest and royalty payments and, more recently, preventing tax avoidance.

38. In March, the Commission had issued a proposal for a long-term solution to the problem of taxing the digital economy. As it did not have the competence to issue rules on direct taxation, its proposal was built on its mandate to regulate the internal market. The solution dovetailed with the existing corporate income tax system: it created new definitions of "permanent establishment" based on the definition of "significant digital presence", which was a function of companies' revenue, number of users and number of business contracts. The solution also established new rules on profit allocation, since companies needed to have profits attributed to them in order to be considered permanent establishments.

39. In the same month, the Commission had issued a recommendation to European Union member States to renegotiate their tax treaties in order to apply the new rules, should they be introduced. The recommendation was necessary because if States began to use a new definition of permanent establishment that differed from the definition under existing tax treaties, it would hinder them in their relations with third countries.

40. Having decided that an interim solution was needed to ensure that States did not all adopt different approaches, the Commission had adopted a Council directive on a common system for a digital services tax. The tax was an indirect tax that focused on activities where there was a large gap between the value added and the ability to tax it, and those that relied heavily on user participation and data collection. The businesses that would be hit by the 3 per cent tax were those that

sold advertisements on digital interfaces, acted as intermediaries between service providers and customers or transferred data collected from users. Start-ups were exempt from the tax, as the European Commission also wanted to promote digitalization and innovation. Companies would be taxed in the country where most of their users were located, and member States would then distribute the tax revenue among all the States from which companies made their profits.

41. **Ms. Anyangwe** (*The Guardian*) asked how likely it was that the proposed solutions would be adopted, what pushback could be expected and how the European Commission would counter it.

42. **Mr. Roelofsen** (Co-Coordinator, Subcommittee on Tax Issues related to the Digitalization of the Economy, Committee of Experts on International Cooperation in Tax Matters; and Deputy Head, International Tax Unit, Ministry of Finance, Netherlands) said that there was a great deal of political debate in Europe, where interest in the discussion varied: the size of countries' domestic markets differed, and some countries had traditional economies while others had more innovation-based economies. Countries that did not favour the proposals could argue that the Commission was overreaching its mandate, and that European rules were not needed. Some countries had changed their position, very much favouring the measures until they realized that their companies might be affected. Although it was difficult to predict whether the current proposals would be adopted, there was growing awareness that international tax problems could be solved only through increased coordination, cooperation and integration. The eventual solution would be a global one, but perhaps not the current one.

43. **Mr. Jenn** (Deputy International Tax Counsel, Department of the Treasury, United States of America), panellist, said that there was currently a great deal of dissatisfaction with existing principles for allocating taxing rights, and the consensus around those principles was in a precarious state. Legislative developments around the world reflected the dissatisfaction with outcomes under the existing system, and aggressive audit practices in many jurisdictions perhaps reflected what countries might wish the rules to be, as opposed to what the rules currently were.

44. However, it was clear that the dissatisfaction was not limited to specific digital business models or digital companies. The United States did not believe that there was any principled or practical basis for distinguishing between digital and non-digital business models when formulating tax policies.

45. Proponents of digital-specific tax regimes argued that although value was being created by users in a given area, the taxing authority for that area had no rights to tax the provider because it was located outside of their jurisdiction. However, digital businesses, many of which were ultimately selling advertising, were merely acquiring input from users outside their jurisdictions. The process was not fundamentally different from the way that non-digital businesses might source input from unrelated suppliers outside their jurisdictions; for example, a car manufacturer might source steel from another country. In the case of digital providers, the transactions were barter transactions, whereby they obtained input in exchange for providing free services, such as search engines, but that did not change the value addition analysis. On that basis, it was hard to see a principled case for distinguishing between digital and non-digital business models.

46. There were also practical difficulties in distinguishing between digital and non-digital businesses for purposes of tax policy. The OECD reports entitled *Addressing the Tax Challenges of the Digital Economy, Action 1 — 2015 Final Report* and *Tax Challenges Arising from Digitalisation — Interim Report 2018* made that clear when they referred to the impossibility of "ring-fencing the digital economy". The 2018 report also made it clear that there was a spectrum of digitalization; thus, the creation of distinct tax regimes would create the need to draw artificial distinctions to determine which companies should be subject to a digital tax regime. It would be extremely difficult to administer such boundaries, particularly in cases where companies had two or more product lines, some of which could be considered digital and some not — an administrative issue that could particularly pose challenges for developing countries. Not only would it be difficult to establish and defend a definition of "digital companies", but a new digital tax system would have huge consequences; in effect, a completely different, parallel tax system would be introduced.

47. The United States believed that there was good cause to consider changes to the international tax system that would be more broad-based, apply across industry, and would address countries' reasonable concerns regarding allocation of taxing rights. As such, it would continue to engage in work towards a more sustainable international tax system that eliminated the possibility of double taxation.

48. **Ms. Anyangwe** (*The Guardian*) asked Mr. Jenn how, as digital businesses grew and created value, tax policy could be used to create much-needed revenue for development, if not through the creation of a separate digital tax system.

49. **Mr. Jenn** (Deputy International Tax Counsel, Department of the Treasury, United States of America) said that a broad-based approach was needed, because the challenges that some had identified with the digital economy were not emanating exclusively from digital companies. Developed and developing countries differed in terms of capacity for tax administration, and administering a new type of regime alongside the existing regime would be a particular challenge for developing countries.

50. **Ms. Perez-Navarro** (Deputy Director, Centre for Tax Policy and Administration, Organization for Economic Co-operation and Development (OECD)), panellist, accompanying her statement with a digital slide presentation, said that addressing the tax challenges of the digital economy had been selected as Action 1 of the Base Erosion and Profit Shifting Project because it was a widespread concern. OECD reports before 2015 had considered the digital economy an entirely separate sector of the economy, but the 2015 final report entitled *Addressing the Tax Challenges of the Digital Economy, Action 1* and the 2018 interim report entitled *Tax Challenges Arising from Digitalisation* had emphasized the difficulty of ring-fencing digital services, given that every economic sector was being digitalized. From the 2015 report onwards, indirect and direct taxation had therefore been considered in broader terms.

51. The 2015 report provided clear recommendations on destinations, principles and simplified taxation mechanisms for indirect taxation. Since few developed countries had implemented the recommended changes to value added tax, international organizations should help countries to understand and appreciate the value of amending such rules. With regard to direct taxation, recommendations in the report included changing rules pertaining to transfer pricing and controlled foreign corporations and amending the definition of permanent establishment. The report had highlighted three interim solutions available to Governments, without recommending any one of them: the introduction of the concept of significant economic presence, the imposition of a withholding tax or an equalization levy.

52. By the time the 2018 interim report had been released, taxation of the digital economy had become highly politicized. OECD had issued the interim report after Germany had highlighted taxation of the digital economy as a priority issue of its G-20 presidency and had requested OECD to provide an update of the situation before its final report, due in 2020. The report had not been drawn up exclusively by OECD, but by the Inclusive Framework on Base Erosion and Profit Shifting in coordination with 116 countries and jurisdictions. Participants of the Inclusive Framework had also agreed to provide a more in-depth analysis of the rules on profit allocation and nexus in the future.

53. Tax administrations would face numerous additional challenges as a result of the digitalization of the economy and technological advances. OECD was committed to delivering its final report in 2020; however, in the light of the importance of the topic and the pace of change, it would provide the requested updates in 2019.

54. **Ms. Anyangwe** (*The Guardian*), asked whether there were any aspects of cooperation on tax matters that could be considered low-hanging fruit, especially given how politicized the issue had become.

55. **Ms. Perez-Navarro** (Deputy Director, Centre for Tax Policy and Administration, Organization for Economic Cooperation and Development (OECD)) said that there were few easy solutions because Member States were divided into three broad camps of thought. Some were committed to fulfilling the 2013 Action Plan on Base Erosion and Profit Shifting and then reassessing in 2020 how well the measures had worked. That approach was reasonable since reports assessing the situation had not even been submitted yet. Other countries, including the United States, agreed with the inference in the Action Plan that it was impossible to ring-fence the digitalized economy and that any solution must therefore be broad in scope. The third group considered, conversely, that it was feasible to target a solution to the digitalized economy. No matter what solution the technical experts of the Inclusive Framework on Base Erosion and Profit Shifting devised, Member States would need to show the political will to achieve consensus.

56. **Mr. Bansal** (Joint Secretary, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, India), panellist, accompanying his statement with a digital slide presentation, said that the number of Internet users and digital economy transactions in India had increased significantly in recent years. Since the digital economy was growing so rapidly, more attention should be paid to domestic resource mobilization through taxation on transactions. Although taxation of the digital economy had been considered under the Base Erosion and Profit Shifting Project, the subsequent Action Plan had focused on the taxation of stateless income and the imposition of tax on value creation or significant economic transactions rather than the crucial issue of the allocation of taxing rights between countries. As none of the three interim solutions proposed in the OECD 2015 report were recognized as

international standards, countries were effectively free to decide which solution to apply.

57. His Government had opted for the imposition of an equalization levy. The levy had become necessary because many digitalized businesses in India had significant market presence but avoided taxation through a lack of physical presence. That gave them an unfair advantage over domestic competitors, while increasing the tax burden on domestic enterprises and citizens, to the detriment of society. Of the three options proposed in the OECD 2015 report, the equalization levy offered the advantages of tax neutrality between companies in India and abroad, minimal disruption to enterprises due to the low costs of compliance and administration, and the possibility for companies to adjust their business models either to the current or to the new tax regime. The equalization levy was currently applied only to online advertising and was imposed at a rate of 6 per cent on payments to non-residents by persons resident in India, persons carrying out business, in India or persons with a permanent establishment in India. It was not due if the recipient had a physical establishment in India or aggregate payments were below a certain threshold. It was applicable only to business-to-business, not business-to-consumer, transactions. To avoid double taxation, income subject to the equalization levy was exempt from income tax deductions.

58. India had also introduced into its domestic law a provision defining significant economic presence in terms of the number of digital transactions carried out by a non-resident business in India or the number of users on its platforms. The provision would apply only to countries with which India had no existing treaty agreement in that regard.

59. **Ms. Anyangwe** (*The Guardian*) asked whether initial impressions of the new tax model had been favourable and what early challenges the Government had faced in administering it.

60. **Mr. Bansal** (Joint Secretary, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, India) said that multinational enterprises and taxpayers had not expressed any discontent with regard to the equalization levy. In the long term, he hoped that those companies would change their business models to take into account the levy. Administration of the tax had been greatly simplified by placing the compliance burden on the payer rather than the payee: the payer filed a form at the end of the tax year, detailing the total amount of equalization levies collected.

61. **Ms. Baig** (Director, Indirect Tax, Legal Tax Design, National Treasure, South Africa), panellist, accompanying her statement with a digital slide presentation, said that according to the OECD Action Plan, base erosion and profit shifting was a problem whereby large multinational companies situated in low-tax jurisdictions earned income on transactions but did not inject money back into a country's economy by way of tax revenue. Offshore companies therefore had an unfair advantage over domestic ones. In the wake of the 2013 Action Plan, South Africa had been one of the members of Working Party 9 on Consumption Taxes to help draft Guidelines on the application of Value Added Tax/Goods and Services Tax to the international trade in services and intangibles for public consultation, designed to prevent non-taxation or double taxation. The Guidelines included sections on the collection of value added tax on intangible goods, such as services in the cloud, and on the amendment of legislation to improve the self-assessment techniques used by many countries to collect value added tax, such as reverse-charge mechanisms, which were susceptible to abuse on account of fraud or taxpayer ignorance. They also recommended shifting the responsibility of declaring value added tax from consumers to offshore suppliers.

62. In June 2014, South Africa had introduced legislation on the inbound supply of electronic services, which, barring some exceptions, placed the onus of registering and reporting value added tax onto the offshore supplier. The legislation was applicable to consumers based in South Africa, regardless of whether the supplier had a physical presence in the country. Since South Africa was only the second country in the world to introduce legislation of that kind, the Government had initially been uncertain of how best to proceed. To ease transition to the new tax system, it had at first applied the legislation to a limited number of services. The Government had also reduced the compliance burden on the supplier by simplifying the registration and tax return filing process and making it available online. The $161 million collected from the new tax and the registration of 200 new foreign suppliers between June 2014 and September 2017 demonstrated the enormous amount of revenue that must have been lost on tax receipts in the past. In addition, the tax collection rate had risen to nearly 100 per cent and the registration time had been reduced to merely four days.

63. The Government intended to introduce further legislation to broaden the number of services subject to the new tax regime. Special provisions had also been introduced to tax the wide array of electronic platforms that existed. Such companies, called "intermediaries" in the South African Value Added Tax Act, were deemed to be any persons who facilitated the supply of electronic

services supplied by electronic service suppliers and were responsible for issuing the invoices and collecting payment for the supply. Most countries had found intermediaries difficult to regulate because of the variety of roles which they performed in the supply chain, the rate of evolution of their business models and the complexity of deciding on their legal jurisdiction. The advantages of the new South African provision were that it was relatively easy to implement since intermediaries possessed all the information needed on electronic transactions and that it would ensure parity between domestic and foreign suppliers. Neither the value added tax legislation nor the provision governing intermediaries distinguished between business-to-business and business-to-customer transactions since, unlike European countries, South Africa had never distinguished between the two.

64. **Ms. Anyangwe** (*The Guardian*) asked what lessons developing countries could learn from the early pitfalls which South Africa had faced in changing its tax system.

65. **Ms. Baig** (Director, Indirect Tax, Legal Tax Design, National Treasure, South Africa) said that a major challenge which developing countries faced was to understand the benefits of tax reform well enough to garner political support. They should consider the possibilities of involving big companies in the reform process to meet information technology and other infrastructure costs. Lastly, Governments should tap into the opportunities for resource mobilization offered at international discussion panel events, such as those of the Economic and Social Council.

66. **Mr. Rachid** (Secretary, Federal Revenue, Brazil), lead speaker, said that digitalization of the economy posed major challenges to tax administrations worldwide. For lack of guidance, Governments were reacting to the loss of potential revenue, particularly pressurized by the pace of change of the digital economy. Although some Member States and regional organizations had developed measures to make up for the shortfall in tax receipts, it was preferable to devise a common solution. Irrespective of any short-term tax measures adopted in the interest of their people, they should continue to comply with tax treaties and their obligations before international organizations. The work of the Committee of Experts on International Cooperation in Tax Matters was particularly important in the field of tax administration. He encouraged its Subcommittee on tax issues related to the Digitalization of the Economy to provide countries further guidance as soon as possible on how to approach such issues.

67. Physical presence was a key concern in the development of international taxation rules. Physical presence could no longer serve as a guide for taxing digital businesses, since companies could rapidly change their base operations to a foreign jurisdiction. The Brazilian tax administration had invested heavily in technologies to enhance its activities and improve its handling of big data and was currently researching new technologies, such as blockchain. The Public Digital Bookkeeping System, in particular, integrated tax administration at the federal, state and municipal levels. He urged other Governments to strengthen tax administration through sustained investment in technology.

68. **Mr. Protto** (Director of International Tax Relations, Ministry of Treasury, Argentina), lead speaker, said that political involvement was needed to assuage the concerns of policymakers about current business models in the digitalized economy. During its G-20 presidency, Argentina had introduced the issue of tax challenges arising from digitalization to the international agenda. Although it would be difficult to develop a framework in time for the 2020 final report of OECD, any solutions should be long-term and well-coordinated; unilateral solutions, on the other hand, would only have a negative impact on business and trade. Argentina had reformed its fiscal regime in December 2017 to ensure that all digitalized services rendered to final consumers were subject to tax; previously, only business-to-business services had been taxed. To boost compliance and reduce the administrative burden, financial intermediaries were taxed directly. The tax administration was therefore drawing up a list of recognized service providers of digitalized services in Argentina. Tax administrations in other countries might find similar initiatives helpful.

69. **Mr. Sample** (Chair, Taxation Committee, United States Council for International Business), lead speaker, said that countries should recognize that policy decisions regarding the digitalized economy would have a broad impact, since every branch of the economy had already, or would soon, become digitalized. Developing countries, in particular, had the most to gain from the digitalized economy with respect to lower overall costs and a greater potential for economic growth. Governments should not apply adverse tax principles but instead follow the principle, which was quickly becoming internationally accepted, that allocation of income should follow value creation. In the administration of tax, it was vital to adapt tax policies to the wide variety and ever-evolving business models in the digitalized economy. Countries would do well to learn from the work already done by international

organizations, including the European Union and OECD. Consistent policies across countries and regions would in the long run promote compliance and foreign direct investment.

70. **Mr. Smirnov** (Deputy Director, Department of Fiscal and Customs Policy, Ministry of Finance, Russian Federation), lead speaker, said that the experience of the Russian Federation was not unique and could serve as a useful example for others. In the Russian Federation, value added tax was levied according to the place of supply of services. Digital services rendered by foreign companies were also subject to Russian value added tax, but if the company had no physical presence in the Russian Federation, the buying entity would act as the tax agent and would pay the value added tax through the so-called reverse charge mechanism. Before the Tax Code had been amended in January 2017, individuals had not been considered as tax agents. Since that time, however, companies that provided digitalized services to individuals were required to pay value added tax in the Russian Federation through the reverse charge mechanism. To facilitate the registration of companies, the Federal Tax Service had set up a platform on its website for discussing related issues, applying for registration and filing taxes. By the end of 2017, 150 companies involved in digital services, mostly global industry players, had been registered as value added tax payers.

71. **Mr. Fowler** (Nigeria), speaking on behalf of the Group of African States, said that African countries were working with the African Tax Administration Forum to build capacity for taxing the digitalized economy, including through training initiatives. In some cases, developing countries lacked the technological infrastructure to levy taxes on digitalized business, while in other cases, they were uncertain about the expenditure and returns from implementing a new tax system. The United Nations should do more to involve its Member States in discussions on taxation. Countries might be willing to devote more financial resources to the issue if the United Nations could assure them that tax reform was advisable.

72. **Mr. Elkhishin** (Observer for Egypt), speaking on behalf of the Group of 77 and China, said that the rapid expansion and proliferation of the digital economy created serious challenges for the tax systems of developing and developed countries. It was important to ensure that developing countries were involved in discussions on new taxation standards and rules, especially given that no United Nations intergovernmental body, including the Committee of Experts on International Cooperation in Tax Matters, set standards in that regard. A global solution to tax avoidance might prevent countries from applying unilateral taxation measures.

73. He asked the representative of the Ministry of Finance of India to explain what he had meant by the allocation of taxing rights between countries. He also wondered why more progress had been achieved in applying value added tax than corporate taxation to the digital economy.

74. **Ms. Perez-Navarro** (Deputy Director, Centre for Tax Policy and Administration, Organization for Economic Cooperation and Development (OECD)) said that the international community had not made much progress in applying corporate taxation to the digital economy, partly because it was only just beginning to consider such issues, and partly because countries had been unable to reach consensus. The taxation issues under discussion were complicated and countries had diverging views on the most appropriate solution. Ultimately, however, from a political perspective, some sort of consensus would have to be reached in order to prevent instances of double taxation, multiple taxation or non-taxation.

75. **Mr. Roelofsen** (Co-Coordinator, Subcommittee on Tax Issues Related to the Digitalization of the Economy, Committee of Experts on International Cooperation in Tax Matters; and Deputy Head, International Tax Unit, Ministry of Finance, Netherlands) said that the reason for the lack of consensus might be that it was unclear whether it was the rules applied to taxation that were outdated or the underlying principle of taxation. In that vein, he wondered whether improvements should be made to the current rules on the taxation of profits on value created or whether the concept of value creation was no longer suitable as a principle for corporate taxation.

76. Given that current taxation rules were outdated and that the OECD/G20 Base Erosion and Profit Shifting Project was devising measures that were valuable for all countries, it was not worthwhile to overstate the distinction between developing and developed countries. Each had the same interest in achieving a fairer and more efficient system for taxing multinational enterprises.

77. **Mr. Jenn** (Deputy International Tax Counsel, Department of the Treasury, United States of America) said that the concept of value creation had been introduced as a political slogan in the Action Plan on Base Erosion and Profit Shifting without much analytical consideration of what it would mean. Countries had in practice claimed that their tax system was aligned to the principle of value creation, but on account of the various understandings of what

constituted value creation in a digital economy, it had been difficult to determine when that was true.

78. **Mr. Bansal** (Joint Secretary, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, India) said that any two States had the right to decide whether to tax cross-border income on the basis of the residence or source State of that income. Although clear rules were needed to prevent double taxation, some argued that current regulations, which stipulated that physical presence was sufficient grounds for taxation, needed to be updated. The work carried out in previous intergovernmental forums had resulted in interim solutions but not in international standards. Changes recommended in the various Base Erosion and Profit Shifting Project reports over the years, for example, regarding the attribution of profits to permanent establishments might tackle some issues but had not been universally accepted. He wondered whether full consensus would ever be achievable.

79. **Ms. Baig** (Director, Indirect Tax, Legal Tax Design, National Treasure, South Africa) said that the only assurance that could be provided to policymakers was that countries were losing revenue on potential taxation of the cross-border digitalized supply of services. So long as that sector remained invisible, however, the amount could not be quantified. She recommended following the examples of other Member States which had reaped significant rewards from reforming their tax system without knowing in advance the extent of such losses. Governments from many developing countries argued that they were not rich enough or that many of their citizens had no access to computers. However, those citizens were in many cases using mobile phones to purchase online content. The State was earning tax revenue on such purchases in shops but not from online services. She suggested that OECD and the United Nations should offer developing countries more platforms on which to discuss taxation of the digitalized economy and to hear from countries which had successfully changed their tax regimes.

80. **Ms. Rangaprasad** (Observer for the Global Alliance for Tax Justice) said that global consensus on tax reform must be broad and sustainable. If all countries could buy into a global tax framework, it would minimize the risk of unilateral solutions emerging and in the long term, would benefit businesses and improve public trust, especially in the wake of recent tax fraud scandals. The base erosion and profit shifting agenda, by contrast, had been the opposite of consensus-based: it had been decided by OECD and endorsed by the G-20 at the exclusion of over 100 developing countries. Member States could join the decision-making process on remaining issues, such as the digitalized economy, but only on the condition that they agreed to implement decisions taken in their absence during the earlier process. It was high time to restore the basic principles of democracy and transparency to intergovernmental negotiations on taxation. The Global Alliance for Tax Justice thus continued to plead for a universal and transparent deliberation process on taxation within the United Nations, which would allow for the participation of OECD, World Bank and International Monetary Fund experts, while not excluding any Member States.

81. **Mr. O'Leary** (Ireland) said that Ireland actively supported the work on the digital economy carried out at the OECD and European Union levels. It also supported the conclusion by OECD that further analysis was needed to devise an evidence-based solution to taxation of the digitalized economy by 2020. Short-term solutions were not ideal but pilot measures could in some cases prove useful.

82. His Government strongly disagreed with the recent ruling of the European Commission, requiring Apple to pay €13 billion in back taxes to Ireland. It should be noted that any profits that Apple might choose to reallocate as a result of that process would be transferred to the United States and the European Union, but would in no way impact the tax revenue of developing countries.

83. **Ms. Anyangwe** (*The Guardian*) asked what one suggestion each panellist would offer in anticipation of the 2020 deadline, by which Member States aimed to reach consensus.

84. **Ms. Baig** (Director, Indirect Tax, Legal Tax Design, National Treasure, South Africa) said that countries must realize that the digitalized economy was much more than a passing fad, was evolving quickly and should be taken seriously. The sooner those facts were accepted, the earlier the necessary steps could be taken.

85. **Mr. Bansal** (Joint Secretary, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, India) said that numerous forums on tax cooperation had been held since the OECD Ministerial Conference "A Borderless World: Realising the Potential of Global Electronic Commerce" in 1998 and yet no consensus had been achieved on certain fundamental issues. If consensus was still elusive by 2020, Member States should endeavour to at least take some kind of active measures.

86. **Mr. Roelofsen** (Co-Coordinator, Subcommittee on Tax Issues Related to the Digitalization of the Economy, Committee of Experts on International Cooperation in Tax Matters; and Deputy Head,

International Tax Unit, Ministry of Finance, Netherlands), replying to the representative of the Global Alliance for Tax Justice, said that just as a customer could buy a sandwich in a restaurant without being involved in preparing it, developing countries could benefit from tax reform even though they had not participated in the decision-making process.

87. **Mr. Jenn** (Deputy International Tax Counsel, Department of the Treasury, United States of America) said that even though the digitalization of economies was the most high-profile issue faced by tax administrations, countries were still divided into three radically different camps. The only hope for consensus was to take a broad perspective and to consider issues both in digital and non-digital contexts.

88. **Ms. Perez-Navarro** (Deputy Director, Centre for Tax Policy and Administration, Organization for Economic Cooperation and Development (OECD)) said that OECD engaged with States at all levels through its Task Force on the Digital Economy and the Inclusive Framework on Base Erosion and Profit Shifting. It also worked closely with the African Tax Administration Forum, the Inter-American Center of Tax Administrations, the Intra-European Organisation of Tax Administrations and other regional tax organizations. With regard to Mr. Jenn's remarks concerning value creation, she said that although the concept was difficult to define, it had been included in the Base Erosion and Profit Shifting Project — not as a political slogan but rather to provide guidance to Member States seeking to realign tax policies to value creation. Member States should engage with technical and political experts to ensure that issues were addressed in a fair and sustainable manner. Multiple or unilateral solutions, however, would create difficulties both for tax systems and taxpayers.

The meeting rose at 1 p.m.